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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re EMILY C., a Person Coming Under
the Juvenile Court Law.

DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

JAMES M.,

Defendant and Appellant.

C041992

(Super. Ct. No.
23889-01)

James M. (appellant), the natural father of Emily C. (the minor), appeals from an order of the juvenile court denying him reunification services based on his status as the biological father of the minor and on the ground that services would not be in the best interests of the minor. (Welf. & Inst. Code, § 395; further undesignated section references are to the Welfare and Institutions Code.) Appellant contends generally that the juvenile court committed prejudicial error by denying him status

as a presumed father and also by denying him services and visitation with the minor. We dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2002, the Department of Social Services (DSS) filed an original juvenile dependency petition pursuant to section 300 on behalf of the three-day-old minor. That petition listed appellant as the "alleged" father of the minor. According to the petition, appellant was incarcerated in state prison.

According to the mother of the minor, who is not a party to this appeal, appellant and the mother lived together for about two months. They broke up when appellant went to prison. The mother later became engaged to another man, who is listed on the birth certificate as the minor's father and who signed a declaration of paternity.

Appellant told the juvenile court that he and the mother had lived together from June to early August 2001. He was arrested for an alleged parole violation on August 8, 2001, and remained incarcerated until March 27, 2002. Thereafter, appellant was incarcerated again on May 13, 2002, for another parole violation, and his latest projected release date was in January 2003.

Appellant has never seen the minor. Moreover, he has not signed a declaration of paternity. However, according to appellant, shortly after the minor's birth he had contacted the social worker and advised her of his interest in becoming a part of the minor's life. He sought to arrange immediate visitation

with the minor and wanted custody of the minor in February 2003. Appellant learned he could not visit the minor until after his paternity was confirmed and he had engaged in reunification services. Appellant also testified he and the mother had planned to marry, and he claimed to have once attempted to pay child support for the minor.

At one point appellant did not want to participate in reunification services. However, he told the juvenile court he wanted services during his incarceration. According to appellant, he took the initiative and sought paternity testing, which had been ordered by the juvenile court.

Sometime in April 2002, the juvenile court ordered paternity testing for appellant. Thereafter, according to a report by DSS dated June 12, 2002, testing confirmed that appellant was the father of the minor. At a June 21, 2002, hearing, the court found appellant was the father of the minor.

DSS recommended that the juvenile court deny appellant reunification services "based on his status as a [m]ere [b]iological [f]ather. [Appellant] has not provided for this child's care or support. He is not married to nor has he been married to the mother of this child. He was not living with the child at the time of her birth nor has he ever lived with the child. He has a history of domestic violence with the child's mother He is currently in jail awaiting a jury trial on his new charges. His Parole Agent . . . notified this agency on June 20, 2002 that upon completion of his local process he will be transported to High Desert State Prison. He is pending Board

of Prison Terms action for parole violations. The parole violations he will be answering to are: Use of Methamphetamine, Prowling, Attempted Burglary of an Auto, and Contributing to the Delinquency of a Minor. [Appellant's parole officer] is recommending to the board that [appellant] be returned to custody for the maximum time allowed for these violations which would be 12 months."

At the conclusion of the August 16, 2002, disposition hearing, the juvenile court denied appellant reunification services, ruling that, based on the evidence before it, appellant was not the presumed father of the minor. The court also made the following findings recommended by DSS: Appellant had made no progress toward addressing the cause of the minor's placement, he had a history of criminal behavior that rendered him "unsafe" to provide for the minor, he had his parole violated and was awaiting trial for various charges, he had not lived with the minor nor provided any support, and appellant was the "mere" biological father of the minor and services would not be in the best interest of the minor.

DISCUSSION

While the appeal in this matter was pending, the juvenile court terminated appellant's parental rights.¹ (Apr. 25, 2003, minute order.) In his written opposition to the motion by DSS

¹ Pursuant to the request of DSS, we take judicial notice of the April 25, 2003, order of the juvenile court terminating appellant's parental rights. (Evid. Code, §§ 452, subd. (d)(1), 459.)

to dismiss this appeal as moot and at oral argument, appellant argued that he presented issues that were of "broad public interest that [were] likely to recur," and capable of evading review. Appellant also claimed the appeal should not be dismissed because the denial of reunification services and termination of parental rights may "prevent him from receiving reunification services for any subsequently born children."

"It is well settled that an appellate court will decide only actual controversies. Consistent therewith, it has been said that an action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events." (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10; see generally 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 642, p. 669.) When subsequent events render it impossible for this court, if it should decide the case in favor of appellant, to grant any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. (*Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.)

"Mootness" is an apt term to describe the reality of the situation before us. Appellant filed no appeal from the order terminating his parental rights. That order is now final.

Cases reaching the merits of otherwise moot claims have involved "matters of broad public interest that are likely to recur" (*In re Mark C.* (1992) 7 Cal.App.4th 433, 440; *In re Jody R.* (1990) 218 Cal.App.3d 1615, 1621-1622) or "issue[s] capable

of repetition yet evading review.” (*In re Raymond G.* (1991) 230 Cal.App.3d 964, 967.) The dispositional issues raised by appellant in this case are fact-specific to their circumstances and therefore are unlikely to recur in other cases. Further, dispositional findings and orders are subject to direct and immediate appeal. (§§ 360, subd. (d), 395.) Consequently, ordinarily they are not capable of evading review.

As to appellant’s claim of possible future adverse consequences resulting from dismissal of this appeal, we are persuaded they are too speculative to consider here, and in any event the circumstances that have occurred in this case do not by themselves foreclose appellant from receiving various benefits in future cases.

As we cannot provide any meaningful relief in this appeal, we conclude that appellant’s claims are moot. (*In re Pablo D.* (1998) 67 Cal.App.4th 759, 761; *In re Michelle M.* (1992) 8 Cal.App.4th 326, 330.)

DISPOSITION

The appeal is dismissed.

NICHOLSON, J.

We concur:

BLEASE, Acting P.J.

MORRISON, J.